



**STATE OF HAWAII
OFFICE OF ELECTIONS**

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
elections.hawaii.gov

SCOTT T. NAGO
CHIEF ELECTION OFFICER

**TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON SENATE BILL NO. 216, SD 1
RELATING TO ELECTIONS**

February 12, 2019

Chair Dela Cruz and members of the Senate Committee on Ways and Means, thank you for the opportunity to provide comments on Senate Bill No. 216, SD 1. This bill requires a mandatory recount of election votes when the margin of victory is equal to or less than one hundred or one-half of one percent of the votes cast.

While the Office of Elections takes no position on this bill, it is our understanding that any election contest must "be determined by a court of competent jurisdiction" pursuant to Article II, Section 10 of the Hawaii State Constitution. As a result, HRS §11-173 (repealed by Act 217, SLH 1973), acknowledged this by providing that if there was a small vote difference, a complaint would need to be filed in court for an order to conduct a recount.

We would also propose that the bill be amended to require that the results of the recount be released no later than 72 hours after the closing of polls, to conclude the counting of ballots received for the election and provide notice to the candidates and affected political parties.

Thank you for the opportunity to testify on Senate Bill No. 216, SD 1.



49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

COMMITTEE ON WAYS and MEANS

Tuesday, February 12, 2019, 9:00 a.m., Room 211
SB 216 SD1 RELATING TO ELECTIONS

TESTIMONY

Janet Mason, Legislative Committee, League of Women Voters of Hawaii

Chair Dela Cruz, Vice-Chair Keith-Agaran and Committee Members:

The League of Women Voters of Hawaii strongly supports the intent of this measure that would require a mandatory recount of election votes when the margin of victory is less than one-half of one percent of the votes cast. We offer comments for your consideration.

The public and the legislature already seem to realize this is a very important bill, which will make Hawaii compare more favorably with 43 states that already permit some form of recount. Twenty 20 states and the District of Columbia already provide for *mandatory* recounts like that proposed in this bill. All citizens need to be confident that in close elections there has been a fair examination of counting and other procedures. For a mandatory recount, the cost of the recount should be borne by taxpayers as required in this bill.

It should not be necessary for the Judiciary to intervene in close elections. The State's Chief Elections Officer can conduct the recount in the case of Federal or State elections and the County Clerk can conduct the recount in the case of single County-only elections. We are fortunate that these elections officials have protocols which should make it relatively easy to implement this bill, including using paper ballots, reconciliation of the number of ballots during the election, ballot security and independent observation of elections.

This bill calls for a close votes recount for contests between individual candidates. Why not also provide mandatory recount for ballot measures?

Regarding the .5% trigger for a recount, this appears to compare favorably with an average of .4% used in other jurisdictions.¹ Having "less than 100 votes or .5% of total votes cast, whichever is greater," is a good standard.

We fully support allowing candidates or their representatives or parties challenging a ballot question to witness the recount and we suggest that the rules for the recount be disclosed to the public. As called for in the bill, close elections cannot be certified until after results of mandatory recounts are known. We also

¹ Halvorson, Mark, Platten, Jane, Reed, Sam and Ritchie, Mark. *Recount Principles and Best Practices*, February 2014, page 3.



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support a deadline of no later than 48 hours after election day for completion of a recount. Voters and candidates do have the right to prompt certification of an election.

Thank you for the opportunity to submit testimony.

TO: Members of the Committee on Ways and Means

FROM: Natalie Iwasa
808-395-3233

HEARING: 10 a.m. Tuesday, February 12, 2019

SUBJECT: SB216, SD1 Mandatory Recount of Election Votes – **SUPPORT with Amendment**

Aloha Chair and Committee Members,

Thank you for allowing me the opportunity to provide testimony on SB216, SD1, which would require mandatory recounts in close elections. I support automatic recounts and the amendments made to this bill by the Committee on Judiciary.

One of the issues that was brought up in the recent Hawaii Supreme Court case regarding the election for councilmember of Honolulu City Council District 4 was machine error. The manufacturer indicated that **it is possible for ballot scans to read a box as marked in one scan and as unmarked in another.** (See attached page 24 from the Hawaii Supreme Court's January 25, 2019, decision to invalidate the election.)

Machines are not perfect. Given the potential for machine errors, it is important that in those cases of *extremely close* elections hand recounts be ordered. Therefore, **please amend this bill to include hand recounts in those instances.**

64. Thus, when a voter makes a "marginal mark" or a mark that does not fully comply with ballot instructions, the vote will generally be counted if 4.2% or more of the pixels within the option box are marked.

65. When an option box is marked so that the number of pixels marked falls within approximately seven pixels of 4.2%, it is possible for an option box to be read as marked in one scan but read as unmarked in a second scan (or vice-versa). Studies of past election data have shown that around 0.046% of option boxes fall into the pixel range where this variance can occur.⁶

66. On January 4, 2019, Waters filed a reply to the State Defendants' response to the December 28, 2018 order.

67. Waters argues that Chief Election Officer Nago and the Office of Elections' responses are misleading and reveal that the Hart system does not ensure the intent of the voter is honored in a close election without a hand count because it disregards ballots that are not "properly marked" regardless of

⁶ Ballot Now can also apply an algorithm (the Ballot Now Overvote Reduction Algorithm, or "BNORA") to decrease this variance rate by eliminating false overvotes caused by pen rests, dirt, or other small marks on the ballot. The precinct counters used in polling places and at absentee walk-in locations do not use BNORA. Instead, as the voter is present in those locations, the precinct counters are equipped to return the ballot to the voter if the precinct counter detects an overvote (i.e., more voting positions have been marked in a contest than permitted) or a blank vote for a contest (i.e., no voting position in the contest has been marked).

JADE K. FOUNTAIN-TANIGAWA
County Clerk

Telephone: (808) 241-4800
TTY: (808) 241-5116



SCOTT K. SATO
Deputy County Clerk

Facsimile: (808) 241-6207
E-mail: elections@kauai.gov

**ELECTIONS DIVISION
OFFICE OF THE COUNTY CLERK**
4386 RICE STREET, SUITE 101
LIHU'E, KAUAI, HAWAII 96766-1819

February 12, 2019

**TESTIMONY OF JADE K. FOUNTAIN-TANIGAWA
COUNTY CLERK, COUNTY OF KAUAI
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON SENATE BILL NO. 216, SD 1
RELATING TO ELECTION**

Chair Chair Dela Cruz and Committee Members:

Thank you for the opportunity to offer comments on Senate Bill No. 216, SD 1. This Bill would require a mandatory recount of election votes and ballot measures when the margin of victory for election contests or tabulation for ballot measures is equal to or less than one hundred or one-half of one per cent of the votes cast, whichever is greater.

While our office takes no position on the Bill we wish to note that the high number of total votes cast in at-large contests will inflate the number of votes required to trigger a recount and likely increase the frequency of recounts for Kauai County Council contests.

Applying the Bill's provisions to the four most recently completed elections indicates that recounts would have been required in two of four at-large contests for Kauai county council.

	2018 General	2018 Primary	2016 General	2016 Primary
Total Votes Cast ¹	126,065	91,590	130,792	NO recount. All 13 candidates moved on to the General Election.
Recount Trigger ²	630 votes	458 votes	654 votes	
Margin of Victory ³	352 votes	1,048 votes	497 votes	
	352 < 630 RECOUNT	1,048 > 458 NO Recount	497 < 654 RECOUNT	

Thank you for this opportunity to offer comments on Senate Bill No. 216, SD 1.

JADE K. FOUNTAIN-TANIGAWA
County Clerk

¹ Kauai County Council contest only

² 0.005% of Total Votes Cast

³ Margin of Victory between 14th and 15th place candidates for the Primary Election, and 7th and 8th place candidates for the General Election

LATE

SB-216-SD-1

Submitted on: 2/12/2019 6:31:14 AM

Testimony for WAM on 2/12/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments: